

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

2
3
4
5
6
7

ENTERED <u>12/19/11</u>
FILED
DEC 19 2011
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY _____ DEPUTY

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 In re) Case No. 10-08505-PB7
12 MICHAEL J. CONRAD,) Adv. No. 10-90374
13 Debtor.) ORDER ON DEBTOR'S MOTION
14) TO STRIKE PRAYER
15)
16 L-3 COMMUNICATIONS)
CORPORATION and L-3)
17 COMMUNICATIONS HOLDINGS, INC.)
Plaintiffs,)
18 v.)
19 MICHAEL J. CONRAD,)
20 Defendant.)
21)

22 This case has see-sawed in terms of the respective positions
23 of the parties. There is a separate but related district court
24 litigation pending in the Central District of California. When
25 plaintiffs filed this adversary proceeding, they prayed in the
26 original complaint that this Court allow L-3's claim to be

1 determined by the Central District proceeding. Debtor did not
2 agree, ostensibly because debtor was not ready to go forward in
3 the Central District, and was without counsel.

4 Then, in April 2011, debtor argued before this Court that
5 this Court should stay or abstain in these proceedings in favor
6 of the Central District proceedings, and L-3 argued otherwise, in
7 part because at least some of the issues in the Central District
8 may be resolved by a settlement between some of the parties,
9 leaving others still to be resolved here. At the conclusion of
10 the hearing, this Court announced its decision to stay this
11 adversary until we had a clearer picture of what remained to be
12 resolved here.

13 That left the issue of the language of L-3's prayer, which
14 was inconsistent with L-3's current argument for the prayer it
15 seeks. Over the objection of debtor's counsel, the Court
16 authorized L-3 to amend only the prayer of its complaint.
17 L-3 has done so, and now the debtor seeks to strike L-3's prayer
18 as it was amended because it exceeds the scope of the leave to
19 amend the Court authorized.

20 The original prayer, set out in full stated:

21 WHEREFORE, L-3 prays for judgment against the
22 Defendant as follows:

23 (1) Allowing L-3's claim against the Defendant in
24 the amount determined by the C.D. Cal. District Court
25 in case 09-cv-0099, including all statutory, common
26 law, exemplary and /or punitive damages, and all
reasonable attorneys' fees and costs, as provided under
applicable state law (such as Cal.Civ. Code §§ 3426.1 -
3426.11) and under federal law (such as the Lanham
Act);

1 (2) Declaring the Defendant's debt to L-3, as
2 determined by adjudication of the lawsuit to be
3 nondischargeable in its entirety under Sections
4 523(a)(2)(A), 523(a)(4), and for 523(a)(6) of the
5 Bankruptcy Code, and excepting the L-3 debt from
6 discharge; and

7 (3) Granting L-3 such other and further relief as
8 this Court deems just or appropriate.

9 The prayer in the first amended complaint, to which the debtor
10 objects, changed the language in paragraph (1) only, with
11 paragraphs (2) and (3) remaining identical. Paragraph (1) was
12 changed to read:

13 (1) Allowing L-3's claim against the Defendant in
14 an amount to be determined at trial in this adversary
15 proceeding, but no less than one million dollars
16 (\$1,000,000), including all statutory, common law,
17 exemplary and or punitive damages, and all reasonable
18 attorneys' fees and costs, as provided under applicable
19 state law (such as Cal.Civ. Code §§ 3426.1 - 3426.11)
20 and under federal law (such as the Lanham Act);

21 As noted, debtor has objected to the amended prayer and has
22 moved to strike it. Debtor's lone argument is: "The Amended
23 complaint prays for a specified damage amount to be awarded at
24 trial in the adversary proceeding. That was not what the court
25 permitted."

26 It appears to the Court that debtor is playing some sort of
cat and mouse game, without clearly disclosing what he seeks.
Perhaps a glimmer comes from debtor's Reply in support of his
motion to strike, where the debtor stated:

In the amended complaint, L3 (sic) sought to moot the
ruling staying the bankruptcy case by providing in the new
prayer to the complaint that the factual issues would be
decided by this court at trial. That text explicitly
conflicts with the ruling of this court on the motion to

1 abstain or stay. Consequently, the Motion to strike was
2 filed.

3 L3 (sic) now argues that the order granting the
4 Motion makes this court the trial venue. Conrad
5 requested and this court agreed that the Los Angeles
6 district court would be the trial court venue.

7 The motion to strike can be resolved by a ruling
8 that the prayer to the complaint state that this court
9 will determine the dischargeability of any claim of L3
10 (sic) based on final resolution of the Los Angeles
11 case. This is consistent with the request by Conrad
12 that was granted by this court previously.

13 Debtor's posture is intriguing, and perhaps oblique, as
14 well. Debtor first said, in effect, "don't make me go and defend
15 myself in the district court in the Central District." Then, he
16 seeks a stay of this proceeding and to have the L.A. proceeding
17 go forward. A good portion of the discussion on the debtor's
18 stay motion was that only some parts of the L.A. case might be
19 resolved by a pending settlement, leaving other portions
20 unresolved that will need to be resolved in finally determining
21 L-3's claim against Mr. Conrad. Now, debtor objects to L-3
22 putting a minimum damage number in its prayer, while really
23 arguing over the language in the prayer that would make this
24 Court the trial venue for the monetary claim as well the
25 nondischargeability of any debt.

26 Without saying much about the possible issue, debtor raises
an important issue, whether he intended to or not. L-3's
original complaint set out lots of fact-type allegations against
Mr. Conrad which L-3 contended supported their claims of
nondischargeability under 11 U.S.C. § 523(a). In its

1 jurisdictional allegations, L-3 asserted: "Proceedings to
2 determine the dischargeability of particular debts are core
3 proceedings pursuant to 28 U.S.C § 157(b)(2)(I)." Debtor in his
4 answer admitted that allegation. Nowhere in L-3's original
5 complaint does L-3 ask this Court to determine money damages
6 against debtor if they are warranted. However, in the amended
7 prayer, now L-3 so requests, although it has not sought to
8 discuss or amend any of its jurisdictional allegations.

9 It has been settled law in the Ninth Circuit that a
10 bankruptcy judge may enter a money judgment against a debtor in
11 the context of a nondischargeability proceeding. In re Sasson,
12 424 F.3d 864 (9th Cir. 2005); In re Kennedy, 108 F.3d 1015 (9th
13 Cir. 1997). What, if any, impact on those holdings might emerge
14 from an analysis of the applicability of Stern v. Marshall,
15 _____ U.S. _____, 131 S.Ct. 2594 (2011) has yet to be discussed
16 by either the parties or the Court.

17 The Court's authorization to L-3 to amend its prayer - and
18 only its prayer - was to recognize that not all issues were
19 likely to be resolved in the Los Angeles proceedings. The
20 amended prayer filed by L-3 goes beyond what the Court
21 contemplated, and, to the extent it seeks more than a
22 determination of nondischargeability the Court will require L-3
23 to formally seek leave to set out more specifically what it
24 proposes, and the debtor will have a full opportunity to object
25 to what L-3 proposes.

26 ///

1 Accordingly, the debtor's motion to strike the amended
2 prayer is granted to the extent that it asks this Court to do
3 more than allow L-3's claim, as determined by the district court
4 in the Central District of California, and determine its
5 nondischargeability as set out in paragraph (2) in both the
6 original and amended prayer. If L-3 seeks any more or different
7 relief, they must bring an appropriately noticed motion. The
8 stay of this adversary proceeding will be modified to permit the
9 filing and opposition to any such motion to amend the pleadings
10 in this adversary proceeding.

11 IT IS SO ORDERED.

12 DATED: DEC 19 2011

13
14
15
16
17
18
19
20
21
22
23
24
25
26



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court